

# Timbisha Shoshone Tribe

February 28, 2000

EIS001906

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North Las Vegas, NV 89036-0307

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RE: Draft EIS, Yucca Mountain Project; and Proposed Rulemaking, Yucca Mountain Site Suitability Guidelines, 10 CFR Parts 960 and 963

Dear Ms. Dixon:

The following comments on the Department of Energy's Draft Environmental Impact Statement (DEIS) for a geological repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada, are submitted by the Timbisha Shoshone Tribe, a federally recognized Indian tribe entitled to privileges and immunities by virtue of its status as a Tribe with a government-to government relationship with the United States government.

- 1 [The Timbisha Shoshone Tribe requests an extension of time for (1) the Draft EIS for a Geological Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, and (2) U. S. Department of Energy's Supplemental Notice of Proposed Rulemaking concerning the Yucca Mountain Site Suitability Guidelines, 10 CFR Parts 960 and 963. The deadline for both very
- 2 complicated and extremely important documents is February 28, 2000. Government to government consultation between the DOE and the Timbisha Shoshone Tribe was inadequate. Consultation on the Draft EIS between the DOE and the Consolidated Group of Tribes and Organizations (CGTO) can not be considered a substitute between real, in-depth, government-to-government consultation between the DOE and the Timbisha Shoshone Tribe. In addition, the DOE provided absolutely no consultation for the CGTO or the Timbisha Shoshone Tribe in regards to Proposed Rulemaking concerning the Yucca Mountain Site Suitability Guidelines, 10 CFR Parts 960 and 963.

The Timbisha Shoshone Tribe faxed a letter to you requesting a two month extension, but we have not received a response today. The following comments can be considered preliminary until a consultation meeting between the DOE and the Timbisha Shoshone Tribe can be arranged. We look forward to your participation at this meeting.

Sincerely,



Pauline Esteves  
Tribal Chairperson  
Timbisha Shoshone Tribe



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Wendy Dixon  
EIS Project Manager  
Yucca Mountain Site Characterization Office  
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North Las Vegas, NV 89036-0307

RE: Draft EIS for a Geological Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

Dear Ms. Dixon:

These comments on the Department of Energy's Draft Environmental Impact Statement (DEIS) for a geological repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada, are submitted by the Timbisha Shoshone Tribe, a federally recognized Indian tribe entitled to privileges and immunities by virtue of its status as a Tribe with a government-to-government relationship with the United States government.

3 [The Timbisha Shoshone Tribe strongly opposes the proposed repository at Yucca  
4 Mountain, and considers the DEIS completely inadequate and a violation of the National  
5... Environmental Policy Act (NEPA). A revised DEIS which complies with NEPA  
standards needs to be completed before any Final EIS can be issued. Besides failing on  
NEPA grounds, the DOE has also failed to adequately conduct government-to-  
government consultation with the Timbisha Shoshone Tribe regarding the Yucca  
Mountain Project in general, and the DEIS in particular. The following issues will be  
addressed: (1) inadequate consultation and (2) violations of the spirit and letter of  
NEPA: premature issuance of DEIS with inadequate information, inadequate "no  
project" alternative, extremely disorganized, poorly written document, inadequate  
environmental justice analysis, inadequate groundwater analysis, unexplained cut-off of  
10,000 year compliance period for site, and inadequate transportation analysis.

#### 1. Inadequate Consultation

...5 Even though the Timbisha Shoshone Tribe and other Indian tribes would be impacted by  
the Yucca Mountain Project, no tribe was afforded "affected status" designation by the  
DOE, as provided for in Section 116 (a) of the Nuclear Waste Policy A (NWPA) of  
1982, as amended. Unlike the State of Nevada or counties in the region, the Timbisha  
Shoshone Tribe was never given any funds to fully address the complex environmental  
and cultural issues associated with the proposed nuclear waste repository at Yucca  
Mountain. Since the DOE failed in its fiduciary responsibility in regards to a federally  
recognized, sovereign government, the burden is on the DOE to provide the most



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...5 complete, pro-active, government-to-government consultation possible. The DOE has engaged in *no consultation* with the Timbisha Shoshone Tribe, and very little consultation with the Consolidated Group of Tribes and Organizations (CGTO) regarding the DEIS.

6 In a letter to Wendy Dixon (dated February 24, 2000) the Timbisha Shoshone Tribe requested a two month extension of the DEIS in order to give the DOE and the Timbisha Shoshone Tribe time to begin government-to-government consultation on this document. This request is repeated here. However, before this consultation proceeds, the following preliminary remarks will be submitted to the DOE concerning the DEIS.

## 2. Inadequate Draft Environmental Impact Statement (DEIS)

### A. Inadequate Alternatives/No Project section

7 The DEIS fails to meet even the minimum requirements of NEPA, and thus a revised DEIS needs to be completed and distributed for public comment. NEPA regulations state:

If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action. [40 CFR 1502.9 (a)]

8 It is obvious that the Yucca Mountain DEIS precludes meaningful analysis. It is also true that major points of view concerning the environmental impacts of the proposed project are either ignored or buried in raw, technical data with no explanation or analysis. The DOE could have avoided producing such a waste of time if it had interpreted NEPA in its broadest form. For political, not scientific or environmental reasons, the Nuclear Waste Policy Act states that the EIS for Yucca Mountain site "*need not*" consider the need for a repository, alternatives to geologic disposal, or alternative sites to Yucca Mountain [NWSA, Section 114 (f)]. The DOE *chose not* to consider alternatives to geologic disposal or alternative sites to Yucca Mountain. As stated in 40 CFR Sec. 502.14 of NEPA Regulations, **Alternatives including the proposed action**: "This section is the heart of the environmental impact statement. [I]t should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public."

9... If the DOE chose to present real alternatives, a full, informative NEPA document could have been produced. Instead, the DOE included two non-"required", ridiculous "No Project" alternatives: (1) "Scenario 1 assumes that spent nuclear fuel and high-level radioactive waste would remain at the 72 commercial and 5 DOE sites under institutional control for at least 10,000 years" (DEIS, p. S-24), and (2) "Scenario 2

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assumes that spent nuclear fuel and high-level radioactive waste would remain at the 77 sites in perpetuity, but under institutional control for only about 100 years" (DEIS, p. S-29). The DOE then goes on to states that "neither scenario would be likely if there were a decision not to develop a repository at Yucca Mountain; however, they are part of the EIS analysis to provide a baseline for comparison to the Proposed Action" (DEIS, p. S-29). Yet if neither scenario would be likely, there is no point in including a No Project alternative without substantive real alternatives to the project which can provide a real baseline to the Proposed Action. The DOE states that "There are a number of possibilities that the Nation could pursue, including ... reconsideration of other disposal alternatives to deep geological disposal. However, any of these potential actions are speculative, and DOE therefore did not evaluate them in the EIS" (DEIS, p. S-29).

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Yet the No Action alternative itself is speculative, and DOE's Proposed Action is also highly speculative document with inadequate information and a range of scenarios so wide that there actually is no verifiable "Proposed Action." Various packaging scenarios, thermal load scenarios, national and Nevada transportation scenarios, and repository design scenarios are all presented as the "Proposed Action." A specific Proposed Action is needed so that environmental impacts can be assessed. It is apparent that the DOE does not have enough information to complete a full DEIS at this time. It is also apparent that the timing of the DEIS is politically-driven, and should have been released when the DOE has enough information to create a proper environmental document.

**B. Poorly Written, Poorly Organized Document**

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The DEIS fails the NEPA requirement for an Environmental Impact Statement that is "concise, clear, and to the point" (40 CFR Sec. 1502.2 (b)). Volumes I and II of the DEIS ramble on for hundreds of pages, but it is extremely difficult or impossible to find succinct passages which analyze and summarize environmental impacts. NEPA regulations state: "Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail" [40 CFR Sec. 1500.1 (b)]. Instead, the DEIS is padded with multiple complex scenarios instead of a coherent single Proposed Action, and completely worthless No Action alternatives instead of reasonable alternatives to the proposed project. NEPA Regulations also state under the heading **Writing**: "Environmental Impact Statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them" [40 CFR Sec. 1502.8]. Clearly, this section of NEPA regulations were ignored.

Two examples of DOE's practice of obscuring important information will be given. In the section **Unavoidable Adverse Impacts: Hydrology 10.1.1.3**, one has to wade through nearly two pages of narrative to reach the gist of the Unavoidable Adverse Impact: "Eventually, groundwater with varying concentrations of different radionuclides would reach locations in the hydrologic (groundwater) region of influence where the water could be consumed" (DEIS, p. 10-3).



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This buried statement should have been accompanied with a map clearly depicting groundwater contamination reaching the affected areas, such as wells in the Amargosa Valley and springs in Death Valley. Radioactive contamination of the springs in Death Valley will directly effect the health of Timbisha Shoshone tribal members, many of whom live in Death Valley.

Another example can be found in the down-played reference to chlorine-36 studies buried (with no reference in the index or contents) on pp. 3-46 to 3-47 in the DEIS. Page 3-47 of the DEIS states: "About 13 percent of the samples (31 samples) had high enough chlorine-36-to-total-chlorine ratios to indicate the water originated from precipitation occurring in the past 50 years (that is, nuclear age precipitation)" (DEIS, p. 3-47). This means that in some places, surface water has rapidly reached the unsaturated zone level where the nuclear waste would be placed.

This in itself is a disqualifying condition according to the current DOE General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories, 10 CFR Part 960: "*Disqualifying Condition*: A site shall be disqualified if the pre-waste-emplacement groundwater travel time from the disturbed zone to the accessible environment is expected to be less than 1,000 years along any pathway of likely and significant radionuclide travel" [10 CFR 960 Sec. 960.4-2-1(d)].

Not surprisingly, the DOE is currently proposing to change these guidelines so that such a disqualifying condition would be deleted in relation to site suitability. At the time the DEIS was published, the DOE had not decided to propose the new guidelines. Issuing the new guidelines for public comment at the same time as the DEIS places an unfair burden on the Timbisha Shoshone Tribe as well as the general public.

On p. S-65 of the DEIS Summary it is stated under the heading **Areas of Controversy**: "DOE obtained and evaluated the best information available to prepare this EIS. However, some information is from ongoing studies (such as the chlorine-36 studies used to assess the rate and quantity of water that flows from the surface to the groundwater) and, therefore, is incomplete or unavailable" (DEIS, p. S-65). Yet the DOE uses other ongoing studies and a high level of incomplete or uncertain information to determine its conclusions. If the ongoing studies question the viability of Yucca Mountain as a nuclear waste repository, then they are excluded as a potential environmental impact. This creates a very biased DEIS.

### C. Inadequate Analysis of Native American Concerns/Environmental Justice

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Some of the concerns of Native Americans are briefly noted, and then completely ignored in the DEIS. For instance, the Western Shoshone title to land according to the Treaty of Ruby Valley also includes the Yucca Mountain Site. In 1995, the Western Shoshone National Council, representing the Western Shoshone Nation, declared that Yucca Mountain and all Western Shoshone land to be a Nuclear Free Zone. This fact is not mentioned in the DEIS. On p. 3-9 the DEIS states "aboriginal title of the land had

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- ...11 been extinguished" with the 1985 U. S. Supreme Court decision (*U.S. V. Dam* 1985, all). However, the Supreme Court decision does not prevent the DOE from negotiating with the Western Shoshone people regarding the relationship between the Yucca Mountain Project and the Treaty of Ruby Valley. Sometimes Supreme Court decisions are irrelevant or wrong. The "separate but equal" racist doctrine of the U.S. Supreme Court in *Plessy v. Ferguson* (1896) did not stop the NAACP from fighting its overturn in *Brown v. Board of Education* (1954).
- 12 In the section on Environmental Consequences of Repository Construction, Operation and Monitoring, and Closure, the DEIS states: "...Native Americans consider the intrusive nature of the repository to be and adverse impact to all elements of the natural and physical environment" (p. 4-38). In Table S-1 of the Summary (p. S-67), this concern is listed as an "opposing Native American viewpoint." Since this is an opposing viewpoint, the DOE must believe that the Yucca Mountain site will not have adverse impacts on Native Americans. The DOE does not explain its rationale for this viewpoint.
- 13 The DEIS also ignores the "Native American Perspective" regarding Environmental Justice. A faulty environmental justice analysis concludes: "No disproportionately high and adverse impacts to minority or low-income populations; opposing Native American Viewpoint" (DEIS Summary, p. S-69). This conclusion is made despite quoting the American Indian Writers Subgroup (AIWS) passage from *American Indian Perspectives on the Yucca Mountain Site Characterization Project and the Repository Environmental Impact Statement*: "The past, present, and future pollution of these holy lands constitutes both Environmental Justice and equity violations. No other people have had their holy lands impacted by YMP-related activities (AIWS 1998, page 2-20)." Despite this, the DOE does not explain why it opposes the clear environmental justice argument of Native Americans. Good faith, government-to-government consultation did not occur on this issue, or any other issue, between the Timbisha Shoshone Tribe and the DOE.

#### D. Inadequate Groundwater Analysis

- 14... Table S-1, *Impacts associated with the Proposed Action and No-Action Alternative* of the DEIS Summary, sums up the impacts for *Hydrology (groundwater and surface water)* under the category *Long-term (after closure, about 100 to 10,000 years)*: "Low-level contamination of groundwater in Amargosa Valley after a few thousand years (estimated concentration would be below drinking water standards)" (DEIS Summary, p. S-66).

Yet in **Section S.4.1.9 Accident Scenarios** it states:

For all three thermal load scenarios, radioactive materials that entered the groundwater [from leaking nuclear waste packages] would produce the primary impacts from the repository to human health in the far future... For the high



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thermal load scenario, the peak dose rate would be 9,100 millirem to a maximally exposed individual at 5 kilometers from the repository, occurring 320,000 years after closure (2,800 millirem under the intermediate thermal load scenario and 3,600 millirem under the low thermal load scenario (DEIS Summary, p. S-48).

This information is presented in the form of unanalyzed and unorganized raw data on pp. 5-25 to 5-36 of the DEIS. However, the doses are much higher than what the NRC or the EPA would allow, and are a health risk to all life down-gradient from Yucca Mountain. Even though peak dosage is predicted after 10,000 years, the summary of impacts stops at 10,000 years in Table S-1. There is absolutely no explanation for this in the DEIS. Preliminary chlorine-36 studies also indicate that groundwater infiltration occurs much more rapidly than the models DOE used for the above statistics. The National Research Council in *Technical Bases for Yucca Mountain Standards (1995)* stated (*Executive Summary*, pp. 6-7):

[W]e recommend that compliance assessment be conducted for the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment... A health-based risk standard could be specified to apply uniformly over time and generations. Such an approach would be consistent with the principle of intergenerational equity that requires that the risks to future generations be no greater than the risk that would be accepted today.

The DOE must clearly evaluate the Yucca Mountain Project's potential danger to future generations in the DEIS.

#### E. Inadequate Transportation Analysis

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On page 1-3 the DEIS states:

This [transportation] analysis includes information on such matters as the comparative impacts of truck and rail transportation, alternative intermodal (rail to truck ) transfer station locations, associated heavy-haul truck routes, and alternative rail transport corridors in Nevada. Although it is uncertain at this time when DOE would make any transportation-related decisions, DOE believes that the EIS provides the information necessary to make decisions regarding the basic approaches (for example, mostly rail or mostly truck shipments), as well as the choice among alternative transportation corridors.

It is obvious that the DEIS *does not* provide the necessary information for determining transportation environmental impacts. In its rush to produce the DEIS according to a politically driven time-line, DOE did not finish its transportation analysis so that particular routes in the Preferred Action could be identified. Likely routes for nuclear waste transport were published only last month on the Yucca Mountain Project website. The DOE did not consult with the Timbisha Shoshone Tribe about this new information.



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Transportation routes "are interdependent parts of a larger action and depend on the larger action for their justification" [NEPA Regulations 40 CFR 1508.25(a)(1)(iii)] and thus should be fully analyzed at a national level within the DEIS document. Information published on the website after the DEIS publication should be presented in the revised DEIS.

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The DEIS also fails to analyze nuclear waste transportation impacts for the proposed Timbisha Shoshone Trust Land Parcel at Scotty's Junction along U.S. 95 in Nevada. The DEIS does state that the Carlin and Caliente rail corridors implementing alternatives as well as the Caliente heavy-haul implementing alternative would pass through, overlap, or be located along the edge of the proposed Scotty's Junction Parcel (DEIS, p. 8-13). A high-level nuclear waste transportation route located on a proposed trust land parcel is an extremely negative impact for the Timbisha Shoshone Tribe. However, there is absolutely no mention of any impact to the Timbisha Shoshone by the above proposed routes in the DEIS. The DOE needs to fully analyze the impacts to the Timbisha Shoshone Tribe, including its Environmental Justice implications.

### 3. Conclusion

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The above issues only touch on some of the most glaring deficiencies of the DEIS which are directly relevant to the Timbisha Shoshone Tribe. During future consultations on the DEIS, other issues, such as cumulative impacts and socioeconomic analysis, can be discussed. [The Timbisha Shoshone Tribe is willing to discuss reasonable alternatives to the Yucca Mountain Project with the DOE. We must act responsibly towards present and future generations. We will still be here, and the future generations are us. We will not allow our people and our land to be poisoned. The real alternatives to the Yucca Mountain Project must be explored.]